IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6129 of 1991

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. D.S.SINHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JITESHKUMAR V CHOTAI

Versus

DIST JUDGE RAJKOT

Appearance:

MR JR NANAVATI for Petitioner

MR PARESH UPADHYAY for Respondent No. 1

MR GM JOSHI for Respondent No. 2

CORAM : THE CHIEF JUSTICE MR. D.S.SINHA

Date of decision: 19/04/2002

ORAL JUDGEMENT

#. Heard Mr.J.R.Nanavati, learned counsel appearing for the petitioner, Mr.Paresh Upadhyay and Mr.G.M.Joshi, learned counsels representing respondents No.1 and 2 respectively.

#. By means of instant Special Civil Application, under Article 226 of the Constitution of India, instituted in the year 1991, the petitioner seeks to challenge the decision of the Advisory Committee, rendered on 27th November, 1987, in the matter of selection by promotion to the post of English Stenographer, Grade-I, in the Rajkot District Judgeship.

#. In the selection in question, the petitioner was one of the four candidates. It is not in dispute that he was eligible for consideration at the selection which was on the basis of seniority-cum-merit.

#. Out of the four candidates eligible for consideration for promotion, the petitioner was senior most, and if otherwise found unfit on merits, would have been entitled to be selected being senior most. But, before the Committee, there was material indicating that the petitioner had already been held guilty of grave charges of misconduct and misbehaviour; and that he was awarded punishment of withholding five increments with future effect. Taking into account this factor, and also the nature of the charges which led to the award of punishment, the Committee came to the conclusion that the misbehaviour and misconduct, followed by punishment of stoppage of five increments with future effect, was a case of positive demerits. On this conclusion, the Committee did not find the petitioner fit for promotion.

#. After exclusion of the petitioner, the next person in order of seniority was Mr.Jagdish B.Karia, the respondent No.2 herein. Therefore, the Committee considered the candidature of respondent No.2. Upon consideration of his Confidential Reports and proficiency in respect of the requirement of the job of English Stenographer, Grade-I, the Committee came to the conclusion that respondent No.2 was entitled to promotion, and it recommended accordingly.

#. Before this Court, the petitioner points out that on an Appeal preferred on 26.6.1985 against the punishment of stoppage of five increments with future effect, which formed basis of the opinion of the Committee for rejecting the candidature of the petitioner, the punishment of withholding of five increments with future effect was reduced to withholding of only one increment with future effect. On this premise, the petitioner asserts that he is entitled to be promoted, if necessary, even by unseating respondent No.2, who has been appointed pursuant to the selection under challenge.

#. The learned counsel appearing for respondent No.2 points out that instant petition suffers from unexplained laches inasmuch as that the decision of the Advisory Committee was rendered on 27.11.1987 and the instant petition was instituted after a lapse of more than four years. He also submits that the decision of the Advisory Committee having already been implemented by appointment of respondent No.2, and he, indisputably, being in job for more than 14 years, ought not be unseated even if some illegality is to be found in the decision of the Advisory Committee. Unseating of respondent No.2 would result in manifest injustice to him.

#. The learned counsel of respondent No.2 further points out that, the appellate authority only reduced the quantum of punishment awarded to the petitioner. The finding of guilt regarding his misconduct was not disturbed by the appellate authority. Thus, the guilt of misconduct of the petitioner remained intact throughout. According to him, in view of the established misconduct of the petitioner, neither the Committee committed any error in not recommending the petitioner for promotion, nor its decision is liable to be disturbed on account of the order of the appellate authority reducing the punishment awarded to the petitioner.

#. The learned counsel appearing for respondent No.1 substantially supports the arguments advanced on behalf of respondent No.2, and has added nothing further.

##. The impugned decision of the Advisory Committee, which is subject matter of challenge in this petition, was rendered on 27th November, 1987, and the petition was filed on 30th July, 1991. Indisputably, the petition was inordinately delayed, and no cogent explanation has been furnished in the petition. Therefore, the petition clearly suffers from the vice of laches and liable to be dismissed on this score. However, the Court considers it expedient to consider the case of the petitioner on merits also.

##. On merits, it is not disputed that criterion for promotion to the post of English Stenographer, Grade-I, is seniority-cum-merit, and the candidature of the petitioner was tested on this touchstone. The petitioner was, at the relevant time, guilty of misconduct and misbehaviour, and had been punished therefor with the punishment of withholding of five increments with future effect. Taking into account this factor, and also the nature of charge of misconduct, the Committee rightly

found him unfit for promotion. It committed no mistake in treating the misbehaviour and misconduct leading to the punishment as a case of positive demerits. The finding of the Committee about the positive demerits is a finding of fact and it would not be open to be disturbed by this Court in these proceedings in writ jurisdiction.

##. So far as the impact of reduction of punishment awarded to the petitioner by the appellate authority is concerned, it is to be remembered that reduction of the quantum of punishment does not have the effect of wiping out the finding of guilt of the petitioner. The finding of guilt of the petitioner remains intact. Indeed, it has been upheld. Thus, the submission of the petitioner in this regard is devoid of substance, and it is rejected.

##. The decision of the Advisory Committee, impugned herein, in the opinion of the Court, does not suffer from any such legal infirmity which may warrant interference of this Court in exercise of its extra-ordinary discretionary jurisdiction under Article 226 of the Constitution of India.

##. In the result, the petition fails, and is dismissed accordingly. Rule is discharged. There is no order as to costs.

(D.S.Sinha, C.J.)

(sunil)